

TO:  Commissioner of Patents P.O. Box 1450 Alexandria, VA 22313-1450 or Commissioner of Trademarks P.O. Box 1451 Alexandria, VA 22313-1451	<b>SOLICITOR</b>  <b>MAR 14 2008</b> <b>U.S. PATENT &amp; TRADEMARK OFFICE</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following

DOCKET NO. <b>08-cv-00482-WDM-MEH</b>	DATE FILED <b>3/7/2008</b>	U.S. DISTRICT COURT <b>FOR THE DISTRICT OF COLORADO</b>
PLAINTIFF  SPACECO BUSINESS SOLUTIONS, INC., ET AL.		DEFENDANT  INNOVATIVE OFFICE PRODUCTS, INC.
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 <b>6,478,274</b>		Please see copy of Complaint attached hereto
2 <b>6,854,698</b>		
3 <b>6,983,917</b>		
4 <b>6,955,328</b>		
5 <b>7,017,874</b>		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1 <b>7,060,433</b>			
2 <b>6,505,988</b>			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  <b>GREGORY C. LANGHAM</b>	(BY) DEPUTY CLERK	DATE
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39. Based on Defendant IOP's pending litigations against Plaintiffs in Pennsylvania and California alleging infringement and/or inducement of infringement by the "SpaceArm" product of the '917 patent and Defendant IOP's aggressive demands for documents related to the "SpaceArm II" product, Plaintiffs have a reasonable apprehension of being sued for infringement of the '917 patent based on Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm II" product. Accordingly, there is a present and continuing justiciable controversy between Plaintiffs and Defendant as to whether the "SpaceArm II" product infringes any valid claim of Defendant IOP's '917 patent and as to the validity and scope of the '917 patent.

#### **COUNT FOUR**

##### **(Declaratory Judgment – Noninfringement and Invalidity – U.S. Patent No. 6,955,328)**

40. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 39, and incorporate the allegations by reference as though fully set forth herein.

41. On October 18, 2005, U.S. Patent No. 6,955,328 (the '328 patent) issued entitled Arm Apparatus for Mounting Electronic Devices (Attachment D) to Odd Oddsen, Jr. and was subsequently assigned to Defendant IOP. The '328 patent is undergoing a reexamination based on a *Ex Parte* Request for Reexamination filed May 25, 2007, which was granted by the USPTO on July 24, 2007 (Attachment H-4).

42. Defendant IOP has brought suit against Plaintiff Business Solutions alleging infringement of the '328 patent in the Pennsylvania Action based upon Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm" product.

43. Defendant IOP has brought suit against Plaintiff TMG in the California Action alleging both direct infringement of the '328 patent and inducing Plaintiff Business Solutions' alleged infringement through manufacture, offer for sale, and/or sale of the "SpaceArm" product.

44. Beginning March 5, 2008, Plaintiff Business Solutions ceased making, offering for sale and/or selling the "SpaceArm" product within the United States, excluding a sole specialty customer and customers residing in Pennsylvania, and began selling its improved and redesigned monitor arm device, identified as the "SpaceArm II" product.

45. The "SpaceArm II" product is materially different from the "SpaceArm" product with respect to allegations of infringement of all previously asserted claims of the '328 patent. The "SpaceArm II" product does not infringe, either directly or under the doctrine of equivalent, any valid claim of the '328 patent.

46. At least one or more claims of the '328 patent are invalid for failure to meet one or more of the requirements for patentability as specified in at least 35 U.S.C. §§ 101, 102, 103, and/or 112.

47. Based on Defendant IOP's pending litigations against Plaintiffs in Pennsylvania and California alleging infringement and/or inducement of infringement by the "SpaceArm" product of the '328 patent and Defendant IOP's aggressive demands for documents related to the "SpaceArm II" product, Plaintiffs have a reasonable apprehension of being sued for infringement of the '328 patent based on Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm II" product. Accordingly, there is a present and continuing justiciable controversy between Plaintiffs and Defendant as to whether the "SpaceArm II" product infringes any valid claim of Defendant IOP's '328 patent and as to the validity and scope of the '328 patent.

#### **COUNT FIVE**

**(Declaratory Judgment – Noninfringement and Invalidity– U.S. Patent No. 7,017,874)**

48. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 47, and incorporate the allegations by reference as though fully set forth herein.

49. On March 28, 2006, U.S. Patent No. 7,017,874 (the '874 patent) issued entitled Arm Apparatus for Mounting Electronic Devices (Attachment E) to Odd Oddsen, Jr. and was subsequently assigned to Defendant IOP. The '874 patent is undergoing a reexamination based on an *Ex Parte* Request for Reexamination filed May 25, 2007, which was granted by the USPTO on June 22, 2007 (Attachment H-5) and an *Ex Parte* Request for Reexamination filed December 21, 2007, which was granted by the USPTO on February 27, 2008 (Attachment H-6).

50. Defendant IOP has brought suit against Plaintiff Business Solutions alleging infringement of the '874 patent in the Pennsylvania Action based upon Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm" product.

51. Defendant IOP has brought suit against Plaintiff TMG in the California Action alleging both direct infringement of the '874 patent and inducing Plaintiff Business Solutions' alleged infringement through manufacture, offer for sale, and/or sale of the "SpaceArm" product.

52. Beginning March 5, 2008, Plaintiff Business Solutions ceased making, offering for sale and/or selling the "SpaceArm" product within the United States, excluding a sole specialty customer and customers residing in Pennsylvania, and began selling its improved and redesigned monitor arm device, identified as the "SpaceArm II" product.

53. The "SpaceArm II" product is materially different from the "SpaceArm" product with respect to allegations of infringement of certain previously asserted claims of the '874 patent. The "SpaceArm II" product does not infringe, either directly or under the doctrine of equivalent, any valid claim of the '874 patent.

54. At least one or more claims of the '874 patent are invalid for failure to meet one or more of the requirements for patentability as specified in at least 35 U.S.C. §§ 101, 102, 103, and/or 112.

55. Based on Defendant IOP's pending litigations against Plaintiffs in Pennsylvania and California alleging infringement and/or inducement of infringement by the "SpaceArm" product of the '874 patent and Defendant IOP's aggressive demands for documents related to the "SpaceArm II" product, Plaintiffs have a reasonable apprehension of being sued for infringement of the '874 patent based on Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm II" product. Accordingly, there is a present and continuing justiciable controversy between Plaintiffs and Defendant as to whether the "SpaceArm II" product infringes any valid claim of Defendant IOP's '874 patent and as to the validity and scope of the '874 patent.

#### COUNT SIX

##### **(Declaratory Judgment – Noninfringement and Invalidity – U.S. Patent No. 7,066,433)**

56. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 55, and incorporate the allegations by reference as though fully set forth herein.

57. On June 27, 2006, U.S. Patent No. 7,066,433 (the '433 patent) issued entitled Arm Apparatus for Mounting Electronic Devices With Cable Management System (Attachment F) to Odd Oddsen, Jr. and was subsequently assigned to Defendant IOP. The '433 patent is undergoing a reexamination based on an *Ex Parte* Request for Reexamination filed May 25, 2007, which was granted by the USPTO on July 11, 2007 (Attachment H-7). A second *Ex Parte* Request for Reexamination was filed for the '433 patent on February 21, 2008.

58. Defendant IOP has brought suit against Plaintiff Business Solutions alleging infringement of the '433 patent in the Pennsylvania Action based upon Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm" product.

59. Defendant IOP has brought suit against Plaintiff TMG in the California Action alleging both direct infringement of the '433 patent and inducing Plaintiff Business Solutions' alleged infringement through manufacture, offer for sale, and/or sale of the "SpaceArm" product.

60. Beginning March 5, 2008, Plaintiff Business Solutions ceased making, offering for sale and/or selling the "SpaceArm" product within the United States, excluding a sole specialty customer and customers residing in Pennsylvania, and began selling its improved and redesigned monitor arm device, identified as the "SpaceArm II" product.

61. The "SpaceArm II" product is materially different from the "SpaceArm" product with respect to allegations of infringement of certain previously asserted claims of the '433 patent. The "SpaceArm II" product does not infringe, either directly or under the doctrine of equivalent, any valid claim of the '433 patent.

62. At least one or more claims of the '433 patent are invalid for failure to meet one or more of the requirements for patentability as specified in at least 35 U.S.C. §§ 101, 102, 103, and/or 112.

63. Based on Defendant IOP's pending litigations against Plaintiffs in Pennsylvania and California alleging infringement and/or inducement of infringement by the "SpaceArm" product of the '433 patent and Defendant IOP's aggressive demands for documents related to the "SpaceArm II" product, Plaintiffs have a reasonable apprehension of being sued for infringement of the '433 patent based on Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm II" product. Accordingly, there is a present and continuing justiciable controversy between Plaintiffs and Defendant as to whether the "SpaceArm II" product infringes any valid claim of Defendant IOP's '433 patent and as to the validity and scope of the '433 patent.

#### COUNT SEVEN

##### (Declaratory Judgment – Noninfringement and Invalidity – U.S. Patent No. 6,505,988)

64. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 63, and incorporate the allegations by reference as though fully set forth herein.

65. On January 14, 2003, U.S. Patent No. 6,505,988 (the '988 patent) issued entitled Tilter for Positioning Electronic Devices (Attachment G) to Odd Oddsen, Jr. and was subsequently assigned to Defendant IOP. The '988 patent is undergoing a reexamination based on an *Ex Parte* Request for Reexamination filed July 3, 2007, which was granted by the USPTO on August 17, 2007 (Attachment H-8).

66. Defendant IOP has brought suit against Plaintiff Business Solutions alleging infringement of the '988 patent in the Pennsylvania Action based upon Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm" product.

67. Defendant IOP has brought suit against Plaintiff TMG in the California Action alleging both direct infringement of the '988 patent and inducing Plaintiff Business Solutions' alleged infringement through manufacture, offer for sale, and/or sale of the "SpaceArm" product.

69. Beginning March 5, 2008, Plaintiff Business Solutions ceased making, offering for sale and/or selling the "SpaceArm" product within the United States, excluding a sole specialty customer and customers residing in Pennsylvania, and began selling its improved and redesigned monitor arm device, identified as the "SpaceArm II" product.

70. The "SpaceArm II" product is materially different from the "SpaceArm" product with respect to allegations of infringement of all previously asserted claims of the '988 patent. The "SpaceArm II" product does not infringe, either directly or under the doctrine of equivalent, any valid claim of the '988 patent.

71. At least one or more claims of the '988 patent are invalid for failure to meet one or more of the requirements for patentability as specified in at least 35 U.S.C. §§ 101, 102, 103, and/or 112.

72. Based on Defendant IOP's pending litigations against Plaintiffs in Pennsylvania and California alleging infringement and/or inducement of infringement by the "SpaceArm" product of the '988 patent and Defendant IOP's aggressive demands for documents related to the "SpaceArm II" product, Plaintiffs have a reasonable apprehension of being sued for infringement of the '988 patent based on Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm II" product. Accordingly, there is a present and continuing justiciable controversy between Plaintiffs and Defendant as to whether the "SpaceArm II" product infringes any valid claim of Defendant IOP's '988 patent and as to the validity and scope of the '988 patent.

**COUNT EIGHT**  
**(Inequitable Conduct – U.S. Patent No. 6,478,274)**

73. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 72, and incorporate the allegations by reference as though fully set forth herein.

74. The '274 patent is directed to an extension arm for adjustably mounting a device to a support mount.

75. The '274 patent was filed September 24, 1999 and is related to United States Provisional Application No. 60/133,378 filed May 10, 1999.

76. Prior to May 10, 1998, a year before the filing of the first priority application for the '274 patent, Defendant IOP sold certain extension arms which were not disclosed as prior art to the patent examiner.



77. Some such extension arms sold but not disclosed to the patent examiner as prior art at least include the model 9025 and 9081 extension arm products.

78. These extension arm models have several of the claim limitations disclosed in the claims of the '274 patent including elements that were not found in prior art references available to the Examiner during the prosecution of the '274 patent such as a forearm extension top hole in communication with a forearm extension opening.

79. These extension arm models are material prior art to the '274 patent because they were sold over a year prior to the first priority filing date of the subject matter claimed in the '274 patent and disclosed features that were pertinent to the patentability of several claims of the '274 patent.

80. In an effort to obtain patentability, Defendant IOP failed to disclose these extension arm models as prior art to the '274 patent.

81. The patent examiner was not made aware of all pertinent prior art because these extension arm models were not identified by Defendant IOP as prior art.

82. Had these extension arm models been disclosed as prior art to the patent examiner, several claims of the '274 patent would not have been allowed to issue, and the patent examiner relied upon Defendant IOP's affirmative mischaracterization in allowing issuance of the '274 patent.

83. Defendant IOP's failure to disclose these extension arm models was with deceptive intent in an effort to obtain issuance of the '274 patent and assert those claims against Plaintiffs.

84. The '274 patent is therefore unenforceable by reason of inequitable conduct by Defendant and/or Defendant's attorney during the prosecution of the '274 patent.

**COUNT NINE**  
**(Inequitable Conduct – U.S. Patent No. 6,955,328)**

85. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 84, and incorporate the allegations by reference as though fully set forth herein.

86. The '328 patent was filed as a division of the '698 patent, which is a continuation of the '274 patent. The alleged sole inventor of the '328 patent is Odd N. Oddsen, Jr., who is the President of Defendant IOP. The '328 patent states on its face that it is assigned to Defendant IOP.

87. The '328 patent issued with 19 claims.

88. Originally filed claims 12 and 14-20 were rejected over prior art figures 2 and 3 in the '328 patent.

89. In response, claims 12 and 14-20 were amended and claim 21 (issued as claim 19) was added, and these claims at that point included a limitation that the monitor arm contain projections, or stop members. The Examiner stated that claims 12 and 14-21 were allowed as novel over the prior art because the prior art of record failed to teach:

at least one first stop member [or a first pair of projections] having a first end arranged inwardly of a first endwall and at least one second stop member [or a second pair of projections] arranged inwardly of a second end wall, wherein the first end of the first stop member [or first pair of projections] is spaced from the second end of the second stop member [or second pair of projections] by a distance smaller than the longitudinal length of the trough between the first and second endwalls.

90. Prior art figures 2 and 3 are admitted drawings of Defendant IOP's 9000 series product.

91. During discovery in the Pennsylvania Action, a sample of Defendant IOP's prior art 9000 series product was produced for inspection.

92. Upon inspection of Defendant IOP's prior art 9000 series product, the prior art 9000 series product does in fact teach:

at least one first stop member [or a first pair of projections] having a first end arranged inwardly of a first endwall and at least one second stop member [or a second pair of projections] arranged inwardly of a second end wall, wherein the first end of the first stop member [or first pair of projections] is spaced from the second end of the second stop member [or second pair of projections] by a distance smaller than the longitudinal length of the trough between the first and second endwalls.

93. Prior art figures 2 and 3 do not disclose these stop members or projections as disclosed in claims 12 and 14-21 of the '328 patent.

94. Defendant IOP manufactured and sold the prior art 9000 series product over a year before filing the applications that lead to the patents-in-suit, and Defendant IOP knew of the existence of the stop members and projections in the prior art 9000 series product at all times during the filing and the prosecuting of the application for the '328 patent.

95. While knowing of the existence of the stop members and projections in its own prior art 9000 series product, and in an effort to obtain patentability, Defendant IOP failed to disclose these features of the prior art 9000 series product to the patent examiner. The stop members, or projections, were pertinent claim limitations to the patentability of several claims in the '328 patent.

96. Defendant IOP's failure to disclose highly pertinent features in the prior art 9000 series product was with deceptive intent in an effort to obtain issuance of the '328 patent and assert certain of those claims in this litigation.

97. The patent examiner was not made aware of all pertinent prior art and relied upon Defendant IOP's affirmative mischaracterization in issuing the '328 patent.

FILED  
U.S. DISTRICT COURT  
DISTRICT OF COLORADO

2008 MAR -7 PM 4:55

GREGORY C. LANGHAM  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. **'08 - CV - 00482** WDM-MEH <sup>BY</sup>   J   DEP. CLK

**SPACECO BUSINESS SOLUTIONS, INC., and  
TRADE MANAGEMENT GROUP LIMITED,**

**Plaintiffs,**

**v.**

**INNOVATIVE OFFICE PRODUCTS, INC.,**

**Defendant.**

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**COMPLAINT AND JURY DEMAND**

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Plaintiffs, SPACECO BUSINESS SOLUTIONS, INC., and TRADE MANAGEMENT GROUP LIMITED (collectively "Plaintiffs") for their complaint against Defendant, INNOVATIVE OFFICE PRODUCTS, INC. ("IOP"), hereby allege as follows:

**PARTIES**

1. Plaintiff SpaceCo Business Solutions, Inc. ("Business Solutions") is a Nevada corporation, with a principle place of business at 13100 E. Albrook Drive, Suite 100, Denver, Colorado 80239.
2. Plaintiff Trade Management Group Limited ("TMG") is a Bahamian corporation, with a principle place of business in Nassau, Bahamas.
3. Upon information and belief, Defendant IOP is a Pennsylvania corporation, with a principle place of business in Easton, Pennsylvania.

98. The '328 patent is therefore unenforceable by reason of inequitable conduct by Defendant and/or Defendant's attorney during the prosecution of the '328 patent.

**COUNT TEN**  
**(Inequitable Conduct – U.S. Patent No. 6,505,988)**

99. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 98, and incorporate the allegations by reference as though fully set forth herein.

100. The '988 patent is directed to a tilter for adjustably mounting a device to a support mount.

101. On its face, the '988 patent was filed September 27, 1999 and is related to United States Provisional Application No. 60/137,088 (filed June 2, 1999).

102. Prior to June 2, 1998, a year before the filing of the first priority application for the '988 patent, Defendant IOP sold a model 8011 tilter assembly.

103. The model 8011 tilter was not disclosed as prior art to the '988 patent.

104. The model 8011 tilter assembly has several of the elements disclosed in the claims of the '988 patent including elements which were not found in prior art references available to the Examiner.

105. The model 8011 tilter was material prior art to the '988 patent because it was sold over a year prior to the first priority filing date of the subject matter claimed in the '988 patent and disclosed features that were pertinent to the patentability of several claims of the '988 patent.

106. In an effort to obtain patentability, Defendant IOP failed to disclose the model 8011 tilter as prior art to the '988 patent.

107. The patent examiner was not made aware of all pertinent prior art because the model 8011 tilter was not identified by Defendant IOP as prior art.

108. Had the model 8011 tilter been disclosed as prior art to the patent examiner, several claims of the '988 patent would not have been allowed to issue, and the patent examiner relied upon Defendant IOP's affirmative mischaracterization in allowing issuance of the '988 patent.

109. Defendant IOP's failure to disclose the model 8011 tilter was with deceptive intent in an effort to obtain issuance of the '988 patent and assert those claims in this action.

110. The '988 patent is therefore unenforceable by reason of inequitable conduct by Defendant and/or Defendant's attorney during the prosecution of the '988 patent.

**COUNT ELEVEN**  
**(Inequitable Conduct – U.S. Patent No. 7,066,433)**

111. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 110, and incorporate the allegations by reference as though fully set forth herein.

112. The '433 patent is directed to a reinforced channel for use in a monitor extension arm that is used to hold and support a monitor display device (hereinafter "the reinforced channel").

113. The '433 patent was filed May 21, 2004 and is related to United States Provisional Application Nos. 60/191,266 (filed March 22, 2000) and 60/138,120 (filed June 7, 1999).

114. The reinforced channel of the '433 patent was first disclosed in Provisional Application No. 60/191,266, filed March 22, 2000.

115. Several claims in the '433 patent were allowed because the reinforced channel(s) comprised rollers at the first and second ends of the channel(s) and the rollers were an integral assembly with the channel(s).

116. Defendant IOP sold and shipped its model 7000 series product at least as early as November 13, 1998.

117. Defendant IOP's model 7000 series product disclosed reinforced channel(s) having rollers at the first and second ends of the channel(s) and the rollers being an integral assembly with the channel(s).

118. Defendant IOP's model 7000 series arm is material prior art to the '433 patent because it was sold over a year prior to the first priority filing date of the subject matter claimed in the '433 patent and disclosed features which were pertinent to the patentability of several claims of the '433 patent. Thus, IOP's model 7000 series arm constitutes prior art to the claims of the '433 patent under 35 U.S.C. § 102(a) and (b).

119. In an effort to obtain patentability, Defendant IOP failed to disclose the 7000 series arm as prior art to the Patent Office during prosecution of the '433 patent.

120. The patent examiner was not made aware of all pertinent prior art because the model 7000 series product was not identified by Defendant IOP as prior art.

121. Had the model 7000 series arm been disclosed as prior art to the patent examiner, several claims of the '433 patent would not have been allowed to issue, and the patent examiner relied upon Defendant IOP's affirmative mischaracterization in allowing issuance of the '433 patent.

122. Defendant IOP's failure to disclose the 7000 series product was with deceptive intent in an effort to obtain issuance of the '433 patent and assert those claims in this action.

123. The '433 patent is therefore unenforceable by reason of inequitable conduct by Defendant and/or Defendant's attorney during the prosecution of the '433 patent.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

- A. A declaration that the '274, '698, '917, '328, '874, '433, and '988 patents are invalid;
- B. A declaration that the "SpaceArm II" product does not and has not at any time infringed any valid claim of the '274, '698, '917, '328, '874, '433, and '988 patents.
- C. A declaration that Defendant and/or Defendant's attorney acted with deceptive intent in an effort to obtain issuance of the '274, '328, '433, and '988 patents and thereby are unenforceable by reason of inequitable conduct.
- D. A finding that this case is an "exceptional" case under 35 U.S.C. § 285 and that Plaintiffs are entitled to recover from Defendant an award of attorneys' fees, interest and costs; and
- E. Such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiffs demand a jury trial on all issues so triable.

DATED this 7<sup>th</sup> day of March, 2008.

Respectfully submitted,

FEDER LAW FIRM



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Attorneys for Plaintiffs,

SPACECO BUSINESS SOLUTIONS, INC. &

TRADE MANAGEMENT GROUP LIMITED

### **JURISDICTION AND VENUE**

4. This is a civil action for declaratory judgment of non-infringement of United States Patent Nos. 6,478,274; 6,854,698; 6,983,917; 6,955,328; 7,017,874; 7,066,433; and 6,505,988. Jurisdiction of this Court arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, under the laws of the United States concerning actions related to patents, and 28 U.S.C. §§ 1331, 1332, and 1338(a).

5. Plaintiffs are informed and believe that this Court is the proper venue under 28 U.S.C. § 1391(b), (c) and § 1400 because, upon information and belief, Defendant IOP is subject to personal jurisdiction in this judicial district.

### **BACKGROUND FACTS**

6. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 5, and incorporate the allegations by reference as though fully set forth herein.

7. Plaintiff Business Solutions is in the business of making and selling, *inter alia*, monitor extension arms and related technologies for use with flat panel monitors. On March 29, 2007, Plaintiff Business Solutions filed for bankruptcy in the United States Bankruptcy Court for the District of Colorado.

8. Plaintiff TMG is the owner of certain intellectual property rights related to, *inter alia*, flat panel display systems and has licensed certain of these intellectual property rights to Plaintiff Business Solutions.

9. Upon information and belief, Defendant IOP is in the business of advertising, making, offering for sale, and selling electronic device support products such as monitor arms and accessories therefor, including monitor extension arms in the United States and within this judicial district.

10. Upon information and belief, Defendant IOP is the owner of various patents related to its monitor extension arms including United States Patent Nos. 6,478,274; 6,854,698; 6,983,917; 6,955,328; 7,017,874; 7,066,433; and 6,505,988 ("IOP patents"). All seven of these patents are presently the subject of reexamination pending before the United States Patent and Trademark Office ("USPTO").

11. Defendant IOP has brought suit against Plaintiff Business Solutions alleging infringement of the IOP patents in the United States District Court for the Eastern District of Pennsylvania (Case No. 2:05-cv-04037-LS) ("Pennsylvania Action") based upon Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm" product. As a defense in that action, Plaintiff Business Solutions is contesting the validity of the IOP patents and asserting that the "SpaceArm" product does not infringe any valid claim of the IOP patents. A final judgment on the merits has not yet been reached in the Pennsylvania action regarding infringement by the "SpaceArm" product or invalidity of the IOP patents.

12. Defendant IOP has also brought suit against Plaintiff TMG in the United States District Court for the Central District of California (Case No. 5:07-cv-00192 SGL) ("California Action") alleging both direct infringement of the IOP patents and inducing Plaintiff Business Solutions' alleged infringement. As a defense in that action, Plaintiff TMG is contesting the validity of the IOP patents, asserting inequitable conduct defenses regarding the '274, '328, '988, and '433 patents, and asserting that the "SpaceArm" product does not infringe any valid claim of the IOP patents. A final judgment on the merits has not yet been reached in the California action regarding infringement by the "SpaceArm" product, inequitable conduct, or invalidity of the IOP patents.

13. Plaintiff Business Solutions has made improvements to and redesigned its monitor arm device and as of March 5, 2008 began selling its new "SpaceArm II" product within the United States, excluding Pennsylvania. The "SpaceArm II" product is materially different from the "SpaceArm" product with respect to allegations of infringement of the IOP patents. The "SpaceArm" product is no longer sold within the United States except to customers in Pennsylvania.

14. Based upon Defendant's pending litigations against Plaintiffs alleging infringement and/or inducement of infringement of the IOP patents due to Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm" product, Plaintiffs have a reasonable apprehension of being sued for infringement of the IOP patents based on Business Solutions' manufacture, offer for sale, and sale of the "SpaceArm II" product. Furthermore, Defendant IOP is aggressively seeking documents related to the "SpaceArm II" product in at least the Pennsylvania Action so that, upon information and belief, the "SpaceArm II" product can be added to the pending Pennsylvania and California Actions. Accordingly, there is a present and continuing justiciable controversy between Plaintiffs and Defendant as to whether the "SpaceArm II" product infringes any valid claim of the IOP patents.

15. No valid claim of the IOP patents is infringed by Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm II" product.

**COUNT ONE**  
**(Declaratory Judgment – Noninfringement and Invalidity – U.S. Patent No. 6,478,274)**

16. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 15, and incorporate the allegations by reference as though fully set forth herein.

17. On November 12, 2002, U.S. Patent No. 6,478,274 (the '274 patent) issued entitled Arm Apparatus for Mounting Electronic Devices (Attachment A) to Odd Oddsen, Jr. and

was subsequently assigned to Defendant IOP. A Reexamination Certificate issued for the '274 patent on February 7, 2006 based on an *Ex Parte* Request for Reexamination filed August 11, 2003. The '274 patent is undergoing a second reexamination based on a second *Ex Parte* Request for Reexamination filed July 25, 2007, which was granted by the USPTO on August 17, 2007 (Attachment H-1).

18. Defendant IOP has brought suit against Plaintiff Business Solutions alleging infringement of the '274 patent in the Pennsylvania Action based upon Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm" product.

19. Defendant IOP has brought suit against Plaintiff TMG in the California Action alleging both direct infringement of the '274 patent and inducing Plaintiff Business Solutions' alleged infringement through manufacture, offer for sale, and/or sale of the "SpaceArm" product.

20. Beginning March 5, 2008, Plaintiff Business Solutions ceased making, offering for sale and/or selling the "SpaceArm" product within the United States, excluding a sole specialty customer and customers residing in Pennsylvania, and began selling its improved and redesigned monitor arm device, identified as the "SpaceArm II" product.

21. The "SpaceArm II" product is materially different from the "SpaceArm" product with respect to allegations of infringement of certain previously asserted claims of the '274 patent. The "SpaceArm II" product does not infringe, either directly or under the doctrine of equivalent, any valid claim of the '274 patent.

22. At least one or more claims of the '274 patent are invalid for failure to meet one or more of the requirements for patentability as specified in at least 35 U.S.C. §§ 101, 102, 103, and/or 112.

23. Based on Defendant IOP's pending litigations against Plaintiffs in Pennsylvania and California alleging infringement and/or inducement of infringement by the "SpaceArm" product of the '274 patent and Defendant IOP's aggressive demands for documents related to the "SpaceArm II" product, Plaintiffs have a reasonable apprehension of being sued for infringement of the '274 patent based on Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm II" product. Accordingly, there is a present and continuing justiciable controversy between Plaintiffs and Defendant as to whether the "SpaceArm II" product infringes any valid claim of Defendant IOP's '274 patent and as to the validity and scope of the '274 patent.

#### **COUNT TWO**

##### **(Declaratory Judgment – Noninfringement and Invalidity– U.S. Patent No. 6,854,698)**

24. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 23, and incorporate the allegations by reference as though fully set forth herein.

25. On February 15, 2005, U.S. Patent No. 6,854,698 (the '698 patent) issued entitled Arm Apparatus for Mounting Electronic Devices (Attachment B) to Odd Oddsen, Jr. and was subsequently assigned to Defendant IOP. The '698 patent is undergoing a reexamination based on an *Ex Parte* Request for Reexamination filed August 29, 2007, which was granted by the USPTO on October 19, 2007 (Attachment H-2).

26. Defendant IOP has brought suit against Plaintiff Business Solutions alleging infringement of the '698 patent in the Pennsylvania Action based upon Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm" product.

27. Defendant IOP has brought suit against Plaintiff TMG in the California Action alleging both direct infringement of the '698 patent and inducing Plaintiff Business Solutions' alleged infringement through manufacture, offer for sale, and/or sale of the "SpaceArm" product.

28. Beginning March 5, 2008, Plaintiff Business Solutions ceased making, offering for sale and/or selling the "SpaceArm" product within the United States, excluding a sole specialty customer and customers residing in Pennsylvania, and began selling its improved and redesigned monitor arm device, identified as the "SpaceArm II" product.

29. The "SpaceArm II" product is materially different from the "SpaceArm" product with respect to allegations of infringement of all previously asserted claims of the '698 patent. The "SpaceArm II" product does not infringe, either directly or under the doctrine of equivalent, any valid claim of the '698 patent.

30. At least one or more claims of the '698 patent are invalid for failure to meet one or more of the requirements for patentability as specified in at least 35 U.S.C. §§ 101, 102, 103, and/or 112.

31. Based on Defendant IOP's pending litigations against Plaintiffs in Pennsylvania and California alleging infringement and/or inducement of infringement by the "SpaceArm" product of the '698 patent and Defendant IOP's aggressive demands for documents related to the "SpaceArm II" product, Plaintiffs have a reasonable apprehension of being sued for infringement of the '698 patent based on Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm II" product. Accordingly, there is a present and continuing justiciable controversy between Plaintiffs and Defendant as to whether the "SpaceArm II" product infringes any valid claim of Defendant IOP's '698 patent and as to the validity and scope of the '698 patent.

### **COUNT THREE**

**(Declaratory Judgment – Noninfringement and Invalidity – U.S. Patent No. 6,983,917)**

32. Plaintiffs reallege the allegations of the foregoing Paragraphs 1 through 31, and incorporate the allegations by reference as though fully set forth herein.

33. On January 10, 2006, U.S. Patent No. 6,983,917 (the '917 patent) issued entitled Arm Apparatus for Mounting Electronic Devices (Attachment C) to Odd Oddsen, Jr. and was subsequently assigned to Defendant IOP. The '917 patent is undergoing a reexamination based on an *Ex Parte* Request for Reexamination filed August 13, 2007, which was granted by the USPTO on October 3, 2007 (Attachment H-3).

34. Defendant IOP has brought suit against Plaintiff Business Solutions alleging infringement of the '917 patent in the Pennsylvania Action based upon Plaintiff Business Solutions' manufacture, offer for sale, and/or sale of the "SpaceArm" product.

35. Defendant IOP has brought suit against Plaintiff TMG in the California Action alleging both direct infringement of the '917 patent and inducing Plaintiff Business Solutions' alleged infringement through manufacture, offer for sale, and/or sale of the "SpaceArm" product.

36. Beginning March 5, 2008, Plaintiff Business Solutions ceased making, offering for sale and/or selling the "SpaceArm" product within the United States, excluding a sole specialty customer and customers residing in Pennsylvania, and began selling its improved and redesigned monitor arm device, identified as the "SpaceArm II" product.

37. The "SpaceArm II" product is materially different from the "SpaceArm" product with respect to allegations of infringement of all previously asserted claims of the '917 patent. The "SpaceArm II" product does not infringe, either directly or under the doctrine of equivalent, any valid claim of the '917 patent.

38. At least one or more claims of the '917 patent are invalid for failure to meet one or more of the requirements for patentability as specified in at least 35 U.S.C. §§ 101, 102, 103, and/or 112.